

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #97-39**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of sales tax to check printing and mailing services.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER] provides a check printing and mailing service to clients in Tennessee. The service may be performed in Tennessee or out of state.

Clients transmit a data file to the Taxpayer containing their accounts payable, bi-weekly payroll, or monthly pension checks. The Taxpayer loads the data onto a tape and runs it through a program that laser prints the client's checks, including logo, payee, signature, etc., on blank bond paper which is provided by the Taxpayer. The checks are mailed by an outside, third-party vendor who meters and sorts the checks, then mails them to the clients' vendors or employees by U.S. Mail. The Taxpayer bills the clients for "print services," which also include stuffing envelopes, sorting, and mailing the checks, although charges for these other services are not itemized. Clients are charged separately for postage.

ISSUE

Whether the check printing and mailing service rendered either in Tennessee or out of state are subject to Tennessee sales tax.

RULING

Check printing services performed in Tennessee or out of state are not subject to Tennessee sales tax.

ANALYSIS

The sale of tangible personal property is subject to tax on the sales price. "Sales price" is defined to mean "the total amount for which a taxable service or tangible personal property is sold, including any services that are a part of the sale of tangible personal property. . . ." Tenn. Code Ann. § 67-6-102(25). The definition of "sales price" also includes certain services that are subject to tax. Tenn. Code Ann. § 67-6-102(23)(F). If a service is neither rendered in Tennessee incident to the sale of tangible personal property nor listed as a taxable service, it is not subject to tax. The Taxpayer's services rendered out of state are not subject to Tennessee tax.

The Taxpayer charges clients separately for printing services and U. S. postage. Printing services include other services, such as stuffing the envelopes and sorting and mailing the checks, although charges for these other services are not itemized. Despite the label of printing services, this charge is essentially for a payroll service.

Payroll services are listed as a payroll accounting service under Industry 8721 in the Standard Industrial Classification Index (1987 Ed.), Accounting, Auditing, and Bookkeeping Services, which also includes bookkeeping and billing. Clearly,

check writing is an essential component of accounting, bookkeeping, and payroll services. Printing the checks as well as writing the checks does not change the nature of the service. The Tennessee Supreme Court has held that “[w]hen the primary function and purpose of the taxpayer is to provide services, the ownership, use and maintenance of certain types of personal property and equipment are necessary in order to enable it to furnish the services so that the taxpayer, not its customer, is the ultimate user or consumer within the meaning of sales and use tax statutes.” *Nashville Mobilphone v. Woods*, 655 S.W.2d 934 at 935-37 (Tenn. 1983). Therefore, the entity rendering the payroll service in state is liable for use tax on the paper or other supplies used in providing the service.

The Taxpayer furnishes the paper for printing the checks and does so incident to the payroll or other financial services. The Taxpayer’s primary purpose in printing the checks is to provide payroll services for its clients. The clients do not purchase checks as much as payroll services, which include the printing and mailing of checks. Payroll services are neither incidental to the creation of tangible personal property nor are they a specifically taxable service as listed in Tenn. Code Ann. § 67-6-102(23)(F). Accordingly, charges to customers for printing services as defined under the facts provided are not subject to tax.

There is also a separate charge for U.S. postage used to mail the checks. Postage is not subject to tax. TENN. COMP. R. & REGS. 1320-5-1-.99.

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APPROVED: _____
Ruth E. Johnson
Commissioner

DATE: 9-18-97